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FOLEY AND LARDNER LLP
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WASHINGTON, DC 20007

EXAMINER

MCPARTLIN, SARAH BURNHAM

ART UNIT	PAPER NUMBER
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3636

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 5-26 are rejected under 35 U.S.C. 103(a) as being anticipated by Nishino (4,738,427) in view of Niezoldt (5,791,738). Nishino discloses a seat for a vehicle (Figure 3): comprising: a pair of support frames (8)(8) supported by the vehicle body; a seat back (1)(A) including a seat back frame (1); a reclining device (6) configured to allow the seat back (1)(A) to tilt and support the seat back (1)(A) in a tilting position, the reclining device (6) being supported by an installed on the support frames (8)(8); and a lifter device (3) configured to allow a seat cushion portion (2)(A) to tip up and support the seat cushion portion (2)(A) in a tipping position, the lifter device (3) being supported by and installed on the support frames (8)(8) wherein the reclining device (6) comprises a device mechanism and covers lower ends of the seat back frame (1) as best depicted in Figure 3. The lower end of the seat back frame (1) is supported

The lifter device (3) comprises a first sector gear (20) and a second gear (19) to allow the seat cushion portion (2)(A) to tip up and support the seat cushion portion (2)(A) in a tipping position. The lifter (3) further comprises a first projection (17) and a second projection (22) on an inner portion (unlabeled) of the first and second support

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members (8). The gear (second gear) (19) is pivotally supported on the first projection (17) and the sector gear (first gear) (20) is pivotally supported in the second projection (22).

As disclosed above, Nishino reveals all claimed elements with the exception of a seat back frame made from a pipe/tube and sub-frames welded to the seat back frame and also made from pipes/tubes having upper cut ends and lower ends, wherein each lower end of the frame and sub-frames is spaced in the fore-aft direction and the reclining device falls within the space.

Niezoldt (5,791,738) discloses a seat back (1) including a first tubular/pipe frame (4) and a second tubular/pipe frame or sub-frame (3) having lower ends that are spaced apart in the fore-aft direction and a hook element (12) for receiving a reclining device, in the form of a swivel pin, which falls within the space between the lower ends of the first and second tubular frames. An upper end of the sub-frame (3) is welded to an upper portion of the seatback frame (4). The first (4) and second (3) frames are welded together at top portions (7)(6) as described in column 2, lines 35-40. Each of the sub-frames has an upper cut end as is best disclosed in Figure 1. The "upper cut" corresponds to a right angle cut out portion that receives an edge of reinforcement portion (8). This angle is capable of being formed by a cutting process and therefore constitutes an "upper cut end." A third frame (13) is welded at its ends to the first and second frames at a lower end thereof by way of hook element (12) which extends rearward of the lower ends of the first and second frame in a fore-aft direction.

It would have been obvious to one of ordinary skill in the art at the time of the instant invention to replace the seat back (1)(A) disclosed by Nishino with the seat back taught by Niezoldt. Such a modification would create "a considerable increase in the seat back's stability under load both towards the front and the back" (column 3, lines 2-3).

Response to Amendment/Arguments

3. Applicant's remarks and arguments filed on October 3, 2008 have been considered in their entirety.

Applicant argues that the Examiner's assertion that the right angle bent portion of each sub frame in Niezoldt constitutes a cut end because the angle is capable of being formed by a cutting process is inconsistent with the teachings of Niezoldt. Applicant argues that if the right angle bent portion was formed via a cutting process, flattened sections 6' and 7' would not be formed and would instead be replaced with a hole or gap in which separator (8) rests. The Examiner contends that the term "flattened sections" could in fact refer to a flattened edge section of a cut out in which the separator (8) rests. The language of the Niezoldt makes it undeterminable whether or not the angled portion is formed by bending or cutting. However, it is possible that the angled portion be formed by either bending OR cutting and therefore the Examiner maintains that the teachings of Niezoldt meet the product by process limitations of the claim. Applicant further argues that the broken lines shown in Niezoldt clearly indicate that the flattened sections are bent and not cut out. Again, the Examiner contends that

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such broken lines could equally indicate a cut line or a bend line. Since the angled portion is CAPABLE of being formed by cutting, the Examiner maintains that the teachings of Niezoldt meet the product by process limitations of the claim. Finally, Applicant argues that using a cutting process to form the flattened sections would leave the frame weak and inoperable. The Examiner contends that the presence of separator (8) in the cut out portions would maintain the strength and integrity of the system. The Examiner maintains that the Nishino in view of Niezoldt rejection set forth above reads on the claimed invention.

Conclusion

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to SARAH B. MCPARTLIN whose telephone number is (571)272-6854. The examiner can normally be reached on M-Th 7:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Dunn can be reached on 571-272-6670. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Sarah B. McPartlin/
Examiner
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SBM
January 28, 2009